

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DARRELL MACON,

Plaintiff,

v.

**FAMILY DOLLAR STORES
OF MO, LLC,**

Defendant.

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No. 4:16-cv-00689-NCC

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff Darrell Macon’s Motion to Remand (Doc. 10) and Defendant Family Dollar Stores of MO, LLC’s Motion for Leave to Amend Notice of Removal (Doc. 13). The Motions are fully briefed and ready for disposition. The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to Title 28 U.S.C. § 636(c) (Doc. 20). For the following reasons, Defendant’s Motion will be **GRANTED** and Plaintiff’s Motion will be **DENIED, as moot**.

Defendant timely removed this action to this Court on May 17, 2016, based on diversity jurisdiction (Doc. 1). In its Notice, Defendant alleges that the amount in controversy exceeds \$75,000 and the parties are citizens of different states. Specifically, as relevant to the current Motions, Defendant asserts that Plaintiff is a citizen of the State of Missouri and Defendant is “a Virginian limited liability corporation with its principal place of business in Virginia. As such, Defendant is considered a citizen of Virginia for purposes of diversity” (*Id.* at 3). On June 7, 2016, Plaintiff filed a Motion to Remand, asserting that Defendant “defectively raised the issue of citizenship because it is established law that a limited liability company is a citizen of every state in which its members are citizens” (Doc. 10 at 2). Accordingly, Plaintiff seeks remand

because Defendant failed to properly allege the citizenship of every member of the Defendant LLC within the 30-day removal deadline (*Id.*). On June 8, 2016, Defendant responded that this technical error may be cured by amending Defendant's Notice (Doc. 12) and, on that same day, filed a Motion for Leave to Amend its Notice of Removal (Doc. 13). In its Motion for Leave to Amend its Notice of Removal, Defendant indicates that its sole member is Family Dollar Stores, Inc., which is a Delaware corporation with its principal place of business located in North Carolina. In support of its assertion, Defendant provides the Court with the Affidavit of Marc Metcalf, senior counsel with Family Dollar, Inc. (Doc. 13-1).

"Allegations of jurisdiction which are defective should be discovered and corrected in the District Court." *Texaco-Cities Serv. Pipe Line Co. v Aetna Cas. & Sur. Co.*, 283 F.2d 144, 145 (8th Cir. 1960) (per curiam). One statutory avenue for such a correction is 28 U.S.C. § 1653, under which "[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." *Id.* Based on § 1653, the Eighth Circuit recently allowed amendment on appeal of a removal notice that initially alleged only the residency of the plaintiff after evidence was offered to show the plaintiff's citizenship at the time of filing and removal. *Reece v. Bank of New York Mellon*, 760 F.3d 771, 776-78 (8th Cir. 2014).

The Court finds that Defendant's technical error does not warrant remand. Defendant has provided uncontested information that the sole member of Defendant LLC is Family Dollar Stores, Inc., a Delaware corporation with its principal place of business located in North Carolina. Defendant also asserts that complete diversity existed both at the time of filing as well as the time of removal. Furthermore, Plaintiff does not indicate he would be unfairly prejudiced if Defendant was allowed to amend. Therefore, in the interests of justice, the Court will allow Defendant to amend its Notice of Removal.

Accordingly,

IT IS HEREBY ORDERED that Defendant Family Dollar Stores of MO, LLC's Motion for Leave to Amend Notice of Removal (Doc. 13) is **GRANTED**, and Family Dollar Stores of MO, LLC shall file its Amended Removal Notice within seven (7) days of the date of this Order.

IT IS FURTHER ORDERED that, in light of the Court's decision to grant Defendant's Motion for Leave to Amend Notice of Removal, Plaintiff Darrell Macon's Motion to Remand (Doc. 10) is **DENIED, as moot**.

Dated this 9th day of August, 2016.

/s/ Noelle C. Collins
NOELLE C. COLLINS
UNITED STATES MAGISTRATE JUDGE